

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

MALIBU MEDIA, LLC,)	
)	
Plaintiff,)	Civil Case No. 2:13-cv-11432-GAD-RSW
)	
v.)	
)	
JOHN DOE subscriber assigned IP address,)	
69.244.145.197,)	
)	
Defendant.)	
_____)	

PLAINTIFF’S SECOND MOTION FOR ENLARGMENT OF TIME

Plaintiff, Malibu Media, LLC (“Plaintiff”), by and through undersigned counsel and pursuant to Fed. R. Civ. P. 16 hereby moves for the entry of an order enlarging the time within which the parties have to complete discovery up to and including August 15, 2014, and states:

1. Fed. R. Civ. P. 16(b)(4) states that “[a] schedule may be modified [] for good cause and with the judge’s consent.” *Id.* Good cause is determined based upon the moving party’s “diligence in attempting to meet the case management order’s requirements.” *Johnson v. Muskingum Co. Sheriff’s Dep’t*, 2013 WL 6504692, at *4 (S.D. Ohio 2013) (extending discovery deadline) quoting *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 625 (6th Cir.2002). The Court should “also consider possible prejudice to the [opposing] party.” *Id.*

2. On April 28, 2014, this Court held a status conference and advised the parties that discovery would be reopened.

3. Pursuant to the Court’s Amended Scheduling Order entered on May 2, 2014, the deadline for the parties to complete discovery is today, June 16, 2014.

4. On April 29, 2014, Plaintiff re-served its First set of Interrogatories and Requests for Production.

5. Defendant responded to Plaintiff's discovery on May 19, 2014.

6. In an effort to delay discovery, Defendant's responses contain a limited amount of information and numerous boilerplate objections.

7. Plaintiff is in the process of reviewing Defendant's responses, addressing any deficiencies and objections, and preparing a stipulated protective order for production of relevant documents.

8. Additionally, one of Plaintiff's requests seeks a forensically sound copy of Defendant's hard drives. Without a copy of Defendant's hard drives, Plaintiff cannot conduct a forensic examination which would reveal evidence of copyright infringement.

9. The imaging and examination of defendant's hard drives alone requires a substantial amount of time. Indeed "[a]nalyzing a computer's hard drive can take several weeks or months. Depending on the size of the hard drive, making a forensic copy and verifying the accuracy of that copy could take more than a business day. Thereafter, work is performed on the forensic copy to ascertain if the peer-to-peer client and copyrighted works are on the hard drive. If not, the process continues by searching for evidence of deletions or spoliation. When there have been deletions or spoliation, the process of uncovering that fraud is a labor intensive and time consuming process which takes weeks or months. Further, all of the files on a hard drive which have been spoiled are potentially relevant. Indeed, proving that a hard drive has missing files requires an analysis of the files that are remaining on the hard drive. In light of the foregoing, it is unreasonable to impose a condition that the investigation be limited[.]” *See Malibu Media, LLC v. Mark Fitzpatrick*, 1:12-cv-22767-PAS, (S.D. Fla. July 22, 2013), Declaration of Patrick Paige, CM/ECF 25-4, at ¶ 39.

10. Plaintiff respectfully requests additional time to adequately review Defendant's discovery responses, properly confer with Defendant regarding any discovery deficiencies, address all objections, negotiate a proper protective order for production of the hard drives, and coordinate an appropriate time and place for imaging of the hard drives.

11. Plaintiff requests this Court enlarge the deadline to complete discovery and further requests that this Court adjust the remaining case management deadlines accordingly.

12. This request is made in good faith and not made for the purpose of undue delay.

13. No party would be prejudiced by granting the extension of time.

14. Plaintiff conferred with counsel for Defendant prior to filing this Motion. Defense counsel has not responded at the time of this filing.

WHEREFORE, Plaintiff, Malibu Media, LLC, respectfully requests that this Court enter an order enlarging the time within which the parties have to complete discovery up to and including August 15, 2014 and that all affected case management deadlines be adjusted accordingly. A proposed order is attached for the Court's convenience.

Dated: June 16, 2014

Respectfully submitted,

NICOLETTI LAW, PLC

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ Paul J. Nicoletti